

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LANITA ROBINSON, as Guardian of
VANDEN ROBINSON, a Legally
Incapacitated Person,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

Hon. Victoria A. Roberts

Case No. 09-10341

**ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the Court on Plaintiff's Motion for Partial Summary Judgment. (Doc. # 68). Magistrate Judge Paul Komives recommends the Court DENY Plaintiff's motion. (Doc. # 81). Plaintiff objected to the Magistrate's Report and Recommendation. Defendant responded and Plaintiff replied.

Plaintiff Lanita Robinson moved for partial summary judgment for attendant care benefits from February 1, 2008 to July 21, 2009. Plaintiff argues Defendant Allstate Insurance Co. owed it benefits during that period. Plaintiff says its typed and handwritten calendars, depositions of Plaintiff, and doctors' reports provide reasonable proof of the fact and amount of loss Plaintiff sustained. Plaintiff also says Defendant knew the severity of Vanden Robinson's condition because Defendant paid benefits of \$350 per day until January 31, 2008 without requiring specific documentation.

Defendant contends Plaintiff failed to provide reasonable proof of the fact and amount of loss sustained because multiple inconsistencies exist between Plaintiff's typed and handwritten calendars. Defendant says there is a dispute as to the amount of attendant care Vanden needs. In addition, Defendant says the fact that physicians say Vanden needs attendant care does not mean Plaintiff actually provided the care.

Genuine issues of material fact exist. They include, but are not limited to: (1) how many hours of attendant care Vanden requires per day, (2) what level of compensation is reasonable for the attendant care, (3) whether Plaintiff actually incurred the expenses it claims, and (4) whether the expenses Plaintiff claims are reasonable.

After careful review of the recommended order, the Court finds Magistrate Komives' legal conclusions and reasoning sound. The Court ADOPTS the Magistrate's Report and Recommendation. Accordingly, Plaintiff's Motion for Partial Summary Judgment is **DENIED**.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: August 5, 2011